



March 15, 1999

Mr. Paul C. Sarahan  
Litigation Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR99-0726

Dear Mr. Sarahan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122870.

The Texas Natural Resource Conservation Commission (the "Commission") received a request for various categories of information related to the Bureau of Economic Geology ("BEG"). Specifically, the requestor seeks information "regarding BEG's evaluation of TxDOT's disposal of wastes in shallow injection wells or other shallow in-ground disposal," and "Contract No 96-0198." In response to the request, you submit to this office for review the records, submitted as Enclosures 3A, 3B, and 3C, which you assert are responsive. You state that the commission "has made available to [the requestor] the part of the documents and reports that [the commission] believes to be public." You assert, however, that the remaining submitted information is excepted from disclosure pursuant to sections 552.107 and 552.111 of the Government Code.<sup>1</sup> We have considered your arguments and claimed exceptions, and reviewed the information submitted.

We first consider whether Enclosure 3A may be withheld under the claimed exception. Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 at 1 (1991), 574 at 3 (1990), 462 at 9-11(1987). In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions. Open Records Decision No. 574 at 5 (1990). However, section 552.107(1) does not protect purely

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<sup>1</sup>Although in your original submission to this office you raised section 552.103, you have in later correspondence withdrawn your claim under this exception. Therefore, in this ruling, we do not address the applicability of section 552.103 to the requested information.

factual information unless the factual information constitutes a confidence that the client related to the attorney. *See id.* at 5. We have reviewed the records, submitted as Enclosure 3A, and agree that the information is excepted from disclosure by section 552.107.

You also assert that Enclosures 3B and 3C are excepted from disclosure under section 552.111.<sup>2</sup> Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Upon review of the records contained in Enclosures 3B and 3C, we conclude that the information contained therein reflects the policymaking processes of the commission, and thus may be withheld from disclosure under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

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<sup>2</sup>Although you have raised both section 552.107 and section 552.111 for Enclosure 3B, we will consider whether the information may be withheld under the latter exception, since generally section 552.111 protection is broader than section 552.107(1).

Ref.: ID# 122870

Enclosures: Submitted documents

cc: Mr. Richard Lowerre  
Henry, Lowerre, Johnson, Hess & Frederick  
4006 Speedway  
Austin, Texas 78751  
(w/o enclosures)



March 15, 1999

Ms. Judy Ponder  
General Counsel  
General Services Commission  
P.O. Box 13047  
Austin, Texas 78711-3047

OR99-0727

Dear Ms. Ponder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122724.

The General Services Commission (the "commission") received requests from four requestors for information concerning competing bid proposals submitted to the commission in response to "RFP #4-1098RC, Contract Rental Cars." In response to the request, you submit to this office for review the information which you assert is responsive. You explain that some of the requested information may be proprietary in nature and protected from disclosure by section 552.110 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

Initially, we note that the four requestors have requested information concerning two or more of the other bid proposals. Based on the submitted information, it appears that the bidders were Advantage Rent A Car ("Advantage"), Avis Rent A Car ("Avis"), Dollar Rent A Car ("Dollar"), Enterprise Rent-A-Car ("Enterprise"), Hertz Corporation ("Hertz"), and National Car Rental ("National"). You explain that "[w]hile reviewing the documents, GSC noticed that the bid response submitted by [National] was preceded by a statement as to the 'Proprietary and Confidential' nature of the information in the bid. . . . [Enterprise] cover letter contained a statement of the company's belief that 'all documentation submitted in response to this RFP is confidential by law.'"<sup>1</sup> Apparently, in reliance on Enterprise and National's confidentiality claims, your office has made a determination, "[w]ithout taking a position," that *only* these two bid proposal responses may be confidential.

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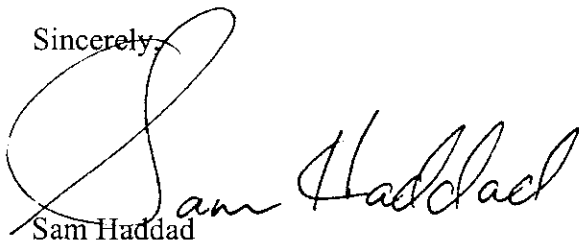
<sup>1</sup>We note that information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

We note, however, that pursuant to section 552.301(b), a governmental body is required to submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Since you have not submitted the information concerning the other bidders, other than Enterprise and National's bid proposals, we restrict the application of this ruling only to the bid proposals submitted by Enterprise and National. *See generally* Gov't Code § 552.352. (act imposes criminal penalties for release of confidential information). We further note that the section 552.110 third-party interests implicated by the four submitted requests may not be waived by a governmental body. Open Records Decision No. 592 (1991).

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office, based on your representations and submission, notified Enterprise and National about the requests for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). The notification states that if the company does not respond within 14 days of receipt, this office will assume that these companies have no privacy or property interest in the requested information. Since neither Enterprise nor National responded to our notification, we assume that their company has no property or privacy interest in the information. Therefore, we have no basis to conclude the information about Enterprise or National is excepted from required public disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 122724

Enclosures: Submitted documents

cc: Ms. Traci Esch  
Advantage Car Rental  
P.O. Box 5-D  
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(w/o enclosures)

Ms. Cheryl Boles  
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Mr. Morris L. Grace  
Dollar Rent A Car  
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Mr. Richard Janicki  
Enterprise Rent-A-Car  
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